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File No. 229(C)

19 31.

Collection No.

Mysore Residency

Bangalore.

(7)

Pros. Serial Nos. 1-8

Subject.

General circulars of the Central Board of Revenue.

Previous References.	Later References.

S. 97.—(Blue).

MFP—168S&P—(M-184)—11-8-34—60,000.

NOTES AND PRECIS.

FILE No. 22(c)1931.

Section. File No.

Heading Serial No.

NOTES.

DEPT. / BRANCH.

Pros. 19 . Nos.

Subject.

General circulars of the Central Board of Revenue.

Notes and Order.

S. 1.

MGIPC—S1—1027 (CPS)MFP—(M-753)—24-8-34—6 00,000.

Circular No.4 of 1932/R.Dis.No.646-I.T./31, dated the March, 1932, from the Central Board of Revenue.

Draft endt. is submitted.

P.Narayanan
16.4.32

Issued No,2766 dated the 20th April,1932.

P.u.c.I

Endt. C.No.1022-I.T./29, dated the 1st March, 1932, from the Secretary, Central Board of Revenue.

P.u.c.II

Endt. C.No.779-I.T./31, dated the 3rd March, 1932, from -do- -do-.

P.u.c.III

Endt. C.No.24-I.T./32, dated the 9th March, 1932, from -do- -do-

IV

Endt. R.Dis.No.24-I.T./32, dated the 14th March, 1932 from -do- -do-.

The four p.u.cs. may be communicated to the Collr. & Assistant Commissioner of I.T., C. & M. Station.

Draft endt. submitted.

T.Narainsamy
19.3.32.

Issued No.2303, dated the 31st March, 1932.

Circular No.7 of 1932/R.Dis.No.834-I.T.-31, dated the 31st March, 1932, from the Secretary, Central Board of Revenue.

P.U.C.II

Circular No.11 of 1932 / C.No.365-I.T/32, dated the 9th May, 1932, from -do- -do-

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P.U.C.III

Circular No.12 of 1932 / D.O.C.No.183-I.T.32, dated the 14th May, 1932, from -do- -do-

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P.U.C.IV

Circular No.13 of 1932/ D.O.R.DIS.No. 217-I.T/32, dated the 18th May, 1932, from -do- -do-

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P.U.C.V

Circular No.14 of 1932/ R.Dis.No.401-I.T./32, dated the 30th May, 1932, from -do-

---

A copy each of the p.u.cs I to V may be forwarded to the Collector and Assistant Commissioner of Income-tax.

Draft endorsement submitted.

13-6-32

1326

Issued No,4031 dated the 18th June,1932.

CORRESPONDENCE.

OFFICE OF THE RESIDENT IN MYSORE.
BANGALORE.
28 MAR 1932
Regd. No. 3983
Ref. No. 229C/31.

Circular No. 4 of 1932.
R. Dis. No. 646-I. T./31

CENTRAL BOARD OF REVENUE.

Rec'd. 12/4

New Delhi, the 3rd March 1932.

CIRCULAR.

Indian Income-tax Act, XI-22—Section 23(4)—Assessment under appeal against—Assistant Commissioner's order refusing to entertain Section 66—reference to High Court in respect of point arising out of—whether admissible.

The Commissioners of Income-tax are informed that, if an appeal purporting to be an appeal under section 30 is filed against an assessment purporting to have been made under sub-section (4) of section 23, it is not within the competence of the Assistant Commissioner to make an *ex parte* order declining to entertain the appeal on the ground that by reason of the proviso to sub-section (1) of section 30 no appeal lies. The appeal must be formally heard in accordance with sub-section (1) of section 31 and a finding recorded on the preliminary issue whether the appeal lies. The decision on this preliminary issue will depend on whether the assessment expressed to have been made under sub-section (4) of section 23 was in fact capable of being made under that sub-section. If the decision on this issue is adverse to the appellant, the appeal will be dismissed on the ground that no appeal lies. An order dismissing the appeal on this ground is an order under section 31 within the meaning of sub-section (2) of section 66, and the assessee is, therefore entitled to require the Commissioner to refer to the High Court any question of law arising out of such order.

21-3-32.

Secretary, Central Board of Revenue.

To

ALL COMMISSIONERS OF INCOME-TAX.

Circular No. 4 of 1935
~~Notification~~
R. Dis No. 366-I.T./35
dt - 28.5.35
Supersedes this notification.
R.N. 7
Vide Cir. No. 8 of 35.
F 321/1935

GIPD—899 CBR—17-3-32—730.

Bare copies of this from file.

~~F 321/1935~~
See S.N. 23
Cp. 36

Section. File No.

Heading. Serial No.

NOTES.

DEPT. / BRANCH.

Pros. 19 Nos.

Subject.

Notes and Orders.

(x with 3 spare copies)

Pre.

Circular No.4 of 1932/R.Dis.No.646-I.T./31, dated the 3rd March, 1932, from the Secretary, Central Board of Revenue.

No 2766 Ser-1

20th Apr. 1932

A copy of the marginally noted paper is forwarded to the Collector and Assistant Commissioner of Income-tax, Civil and Military Station, Bangalore.

for Secy. to the Resident
and
Commr. of I.T.

P. Narainoami
16.4.32

19/4

Circular No. 7 of 1932
R. Dis. No. 834-I. T./31, dated the 30th March 1932.

OFFICE OF THE ACCIDENT IN MYSORE.
BANGALORE.
25 APR. 1932
Regd. No. 3859
File No.

CENTRAL BOARD OF REVENUE.

New Delhi, the 31st March 1932.

CIRCULAR.

Indian Income-tax Act, XI-22 Sections 14(2) (b), 16(1), 26A and 48—Firms—Registration of—Minors—Admission to partnership in—assessments and refunds in respect of minors' shares of profits.

Board's Circular 12 of 1931 / R. Dis. No. 533-I. T.-31, dated the 20th August 1931 and letter R. Dis. No. 533-I. T.-31, dated the 5th October 1931.

The circular and the letter quoted above are cancelled. The position in regard to minors who purport to be partners in, or to have been admitted to the benefits of partnership in, a firm are as follows.

2. A minor cannot become a partner in a firm, but he may be admitted to the benefits of partnership in a firm, with the consent of all the partners for the time being. A minor who purports to be a partner in a firm should be treated exactly like a minor who has been admitted to the benefits of partnership in a firm.

3. A minor who has been admitted to the benefits of a partnership has a right to such share in the property and the profits of the firm as may be agreed upon—not between him and the partners, for he cannot be a party to a contract but between the partners; and his share in the property of the firm is liable for the acts of the firm, but he is not personally liable.

4. Provided that there are at least two persons competent to contract among the members of the firm, the fact that there is also a minor who purports to be a member of the firm, or who has been admitted to the benefits of partnership in the firm does not justify the Income-tax Officer in refusing to register the firm.

5. In such cases the minor has an ascertainable share in the property and the profits of the firm.

His share cannot be "ignored", or attributed to the other partners. The application to his share in the profits of the firm of the provisions of sub-section (2) (b) of Section 14, and sub-section (1) of Section 16 presents no difficulties, whether the firm is registered or not. Since a minor cannot have the status of member of a registered firm for the purposes of sub-section (2) of Section 48, no claim can be made on his behalf to any refund under that section in respect of his share of the profits of a registered firm. Similarly, no claim can be put forward on behalf of the minor to any set off under sub-section (2) of Section 24 in respect of his share in loss sustained by a firm. It is probable that legislation will be undertaken to remove these defects.

Secretary, Central Board of Revenue.

To

All Commissioners of Income-tax.

GIPD—13 CBR.—14-4-32—730.

OFFICE OF THE RESIDENT IN MYSORE.
BANGALORE.
23 MAY 1932
Regd. 4724

CIRCULAR No. 11 OF 1932.
C. No. 365-I.T/32.

CENTRAL BOARD OF REVENUE.

Simla, the 9th May 1932.

CIRCULAR.

Appeals—Assistant Commissioner—Discussion with appellant or representative.

At a recent interview, it was suggested to the Central Board of Revenue that in income-tax appeal cases, the Government should be represented by an attorney. The reason given for proposing this arrangement, which, it appears to the Board, would be both cumbrous and expensive, was that as matters stand, the appellant or his representative have no means of knowing exactly what the case for the Crown is, and meeting it. The Member stated in reply that in his opinion it was the duty of an Assistant Commissioner when hearing an appeal to discuss the case fully with the appellant or his representative, so that the appellate order would not be based on arguments or statements of fact that the appellant or his representative had had no opportunity of meeting and that if this were done, the desired result would be attained.

2. The Board will be obliged if Commissioners of Income-tax will issue instructions to ensure that the procedure indicated above is followed, if it is not, (as the Board believes it is), generally followed already.

18.5.32

Secretary, Central Board of Revenue.

To.

All Commissioners of Income-Tax.

M21CBR—16-5-23—730—GIPS

OFFICE OF THE PRESIDENT IN MYSORE.
31 MAY 1932
Regd. ... 4959
File. No. ...

Circular No. 12 of 1932.
D. O. C. No. 183-I.T.|32.

CENTRAL BOARD OF REVENUE.

Simla, the 14th May 1932.

Exemption from Income-Tax and Super-Tax—Indian Income-Tax Act, XI of 1922—Section 4 (3) (i)—Charitable or Religious purpose—Income from property held under Trust for.

Strong's D. O. No. 15442-C.T., dated the 18th February 1932.

MY DEAR JOHNSTON,

This is a difficult subject. The following questions arise :—(1) whether in view of the provisions of sub-section (3) (*i*) of Section 4 of the Indian Income-tax Act, 1922 (XI of 1922), where property is held under a valid Trust for the worship of an idol, but actually the major part of the income is spent on the maintenance of the original owner of property, or his successor in title, who is designated Shebait, the Income-tax Officer can go into the question of the purpose to which any part of the income is actually devoted, and if he finds that such purpose is, in fact, secular and not religious, can levy income-tax on that part, and (2) can the maintenance of the Shebait in such circumstances be considered to be a charitable or religious purpose

2. Section 4 (3) (*i*) exempts two categories of income. First, income from property which is dedicated absolutely and secondly, in case of qualified dedication, so much of the income as is applied or finally set apart for application to religious or charitable purposes. As a matter of law there is no difficulty in answering the questions put. Difficulty arises, as in most cases, in the application of law to particular facts.

3. In the case of absolute dedication, *i.e.*, where there is no outstanding secular interest reserved by the trust, the exemption is complete, even though the trustee commits breach of trust.

4. In the case of qualified dedication, the trust reserves a secular interest to beneficiaries, shebaits or heirs of the founder, etc. This secular interest is assessable to income-tax. But the wording of the section is wide enough to draw into the net any portion of the dedicated income which is not *applied* or finally *set apart* for application to religious or charitable purposes, although that portion is properly *applicable* to such purposes. Suppose 60 per cent. is under the trust applicable to such purposes and 40 per cent. distributable among the heirs of the settlor. The 40 per cent. is assessable. Suppose also that only 50 per cent. is actually applied or set apart for religious or charitable purposes and the heirs or the Shebaits misappropriate 10 per cent. The 10 per cent. is under the section also assessable. This answers the first question.

5. The maintenance of a Shebait may or may not come within the category of religious or charitable purpose. It depends on the circumstances of the case. If, for instance, a dedication is absolute and a small portion of the income is given to the Shebait for his remuneration for carrying out the trusts of the endowment, it would not be secular. If, on the other hand, a fixed sum is given to religious or charitable purposes and the residue of the income is given to the Shebait for his maintenance, the residue would be held to be secular.

6. The test is whether a suit for partition lies for division of the residue. If it does, then the residue is secular and assessable. In such case, any portion of the dedicated, *i.e.*, ordinarily exempted income which may be misappropriated would also be assessable.

7. It seems probable that in many of the Calcutta cases the dedication is only formal and that there has been no true divesting of ownership. If this is suspected, let the Income-tax Officer tax in the hands of the Shebait the income of the property purporting to be dedicated and it will then apparently be for the assessee to prove that the income in his hands is entitled in whole or in part to the benefit of the first exception created by sub-section (3) of section 4 of the Indian Income-tax Act, 1922.

8. It seems likely, however, that if an application were made under Section 66 of the Indian Income-tax Act, the High Court would refer the parties to a regular suit in which only the character of dedication, whether illusory, partial or absolute, can be determined.

Yours sincerely,

A. TOTTENHAM.

To

W. Johnston, Esq., I.C.S.,
Commissioner of Income-tax, Bengal.

Copy forwarded to all other Commissioners of Income-tax.

By order; etc.,

M. C. Khanna
25.5.32.
for *Secretary, Central Board of Revenue.*

L30CBR—730—23-5-32—GIPS

Circular No.13 of 1932.

D.O. R. No. 217-I.T/32.

6

CENTRAL BOARD OF REVENUE.

Simla, the 18th May 1932

OFFICE OF THE RESIDENT IN MYSORE
BANGALORE.
Rec'd. 1932
No. 4769
File. No. 1016

My dear Wali Mohammad,

Liability to tax—Handling charges—Railway Station Masters.
Your D.O. T.No.8032 dated 4. 5. 32.

What the Government of India decided in 1908 was not correctly stated in my previous letter. They did not 'exempt' these charges, but decided that under section 3(4) of the Indian Income-tax Act, II-1886, corresponding to section 4(3)(vi) of the Indian Income-tax Act, XI-22, they were not liable to tax. I see no reason for re-considering that decision.

2. The fact that Station Masters may sometimes make a profit on these charges does not really affect the legal position. Thus, a Government official may sometimes make a profit on his travelling allowance, but none the less the allowance is exempt under section 4(3)(vi) of the Act. No doubt in the case of a private employer an Income-tax Officer might be justified in ignoring the ostensible purpose for which an allowance was granted, if it were clearly excessive, and were thus merely a device for reducing the tax on an employee's remuneration.

3. But when dealing with such a body as a Railway Company the Government of India held that the Company's declaration that the allowance was intended solely to cover certain expenses that the Station Masters had to incur as such, and was calculated so as to do so as nearly as possible on the average, must be accepted as concluding the question of liability to tax.

4. The allowances should not be taxed therefore.

Yours sincerely,

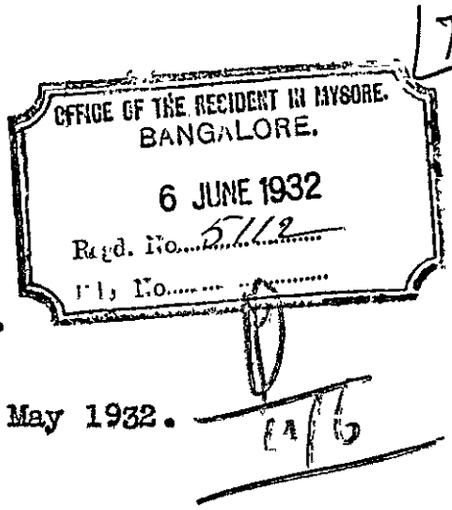
Sd. A. Tottenham.

Khan Bahadur Wali Mohammad, B.A.,
Commissioner of Income-tax, U.P. & C.P.

Copy forwarded to all other Commissioners of Income-tax.
18. 5. 32.

Secretary, Central Board of Revenue.

A66



17

Circular No. 14 of 1932.
R.Dis. No.401-I.T./32.

CENTRAL BOARD OF REVENUE.

Simla, the 30th May 1932.

C I R C U L A R.

The Indian Finance (Supplementary and Extending) Act, 1931 - Surcharge - Income of Rupees 2,000 - Indian Income-tax Act, XI-22 - Section 17 - Effect of - Income-tax Manual, paragraph 58.

The figures given on pages 186 and 186A of the Income-tax Manual for the tax on incomes of Rs. 1,999 and Rs. 2,000 respectively are incorrect. No surcharge is leviable in these cases. The tax leviable on an income of Rs. 1,999 obviously cannot include surcharge. The tax leviable on an income of Rs. 2,000 is the tax leviable on an income of Rs. 1,999 plus Re. 1 and so on upwards within the "marginal relief" zone.

The Income-tax Manual will be corrected.

Secretary, Central Board of Revenue.

To

The Commissioner of Income-tax, Madras, with reference to his letter C.No.401.I.T/32, dated 5th May 1932.

The Commissioner of Income-tax, Bihar & Orissa, with reference to his letter No.A104/5, dated 30th April 1932.

Other Commissioners of Income-tax, all Provinces.

BRS.1/6.

18

No. 6041/Ea 5 Dated 18th June 1932

A copy each of the marginally noted papers is forwarded to the Collector and Assistant Commissioner of Income-tax, Civil and Military Station, Bangalore.

1. Circular No.7 of 1932 dated the 31st March, 1932, P.U.C.I
2. Circular No.11 of 1932 dated the 9th May, 1932, P.U.C.II
3. Circular No.12 of 1932 dated the 14th May, 1932, P.U.C.III
4. Circular No.13 of 1932 dated the 18th May, 1932, P.U.C.IV
5. Circular No.14 of 1932 dated the 30th May, 1932, P.U.C.V

from the Secretary, Central Board of Revenue.

for Secretary to the Resident and Commissioner of Income-tax.

Read on 15/6/32
Typed
MMS
16.6.32